

REMARKS

This Amendment is submitted in reply to the Final Office Action mailed on February 23, 2010. Two Terminal Disclaimers are submitted herewith. The Director is authorized to charge \$140.00 for each Terminal Disclaimer and any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3712036-00597 on the account statement.

Claims 1, 2, 4-8 and 17 are pending in the application. Claims 3, 9-16 and 18-21 were previously canceled. In the Office Action, Claims 1-2, 4-8 and 17 are under 35 U.S.C. §102(b) or, alternatively, under 35 U.S.C. §103(a). In response, Applicants have amended Claims 1-2, 17, canceled Claim 8 without prejudice or disclaimer and newly added Claim 22. The amendments do not add new matter and are supported in the specification at, for example, page 5, lines 1-24; Examples. In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully request that the rejections be reconsidered and withdrawn.

In the Office Action, Claims 1-2, 4-8 and 17 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Publication No. 2001/0043983 to Hamilton ("*Hamilton*") or, in the alternative, under 35 U.S.C. §103(a) as being rendered obvious by *Hamilton*. In contrast, Applicants respectfully submit that *Hamilton* is deficient with respect to the present claims.

Currently amended independent Claim 1 recites a pet food composition comprising an effective amount of an ingredient comprising an admixture of L-carnitine and one of ginkgo biloba and an antioxidant blend in an amount sufficient to improve hair or coat quality of an animal, in an orally acceptable carrier, wherein the antioxidant blend includes cysteine, grape or grape seed extracts rich in proanthocyanidins, vitamin C and vitamin E. The amendment to Claim 1 is supported in Applicants' specification at, for example, page 5, lines 1-24; Examples. As is clearly shown in the Examples of the specification, the total lipids of adult mice are significantly increased by antioxidant cocktail associated to L-carnitine. Additionally, diets containing the antioxidant cocktail alone (diet C) or combined with L-carnitine (diet D) increased the proportion of non-polar lipids to about 60% in hair sebum as compared to 46% in the control diet. Further, mice fed with the antioxidants of diet C had coats that were considered glossier than mice in other groups, and mice fed the diet containing the cocktail of antioxidants associated or not to L-carnitine (diet D and diet C, respectively) showed an increase in non-polar

and polar lipids as well as total lipids in hair sebum when compared to the control diet A. See, specification, Examples. In contrast, Applicants submit that *Hamilton* fails to disclose or suggest each and every element of the present claims.

Hamilton fails to disclose or suggest a pet food composition comprising an effective amount of an ingredient comprising an admixture of L-carnitine and one of ginkgo biloba and an antioxidant blend in an amount sufficient to improve hair or coat quality of an animal, in an orally acceptable carrier, wherein the antioxidant blend includes cysteine, grape or grape seed extracts rich in proanthocyanidins, vitamin C and vitamin E as required, in part, by currently amended independent Claim 1. Indeed, at no place in the disclosure does *Hamilton* disclose or even suggest the use of ginkgo biloba or grape or grape seed extracts, let alone the synergistic combination of the presently claimed L-carnitine and one of ginkgo biloba and an antioxidant blend.

Instead, *Hamilton* teaches administering compositions to aged pets and other animals. See, *Hamilton*, Abstract. The compositions of *Hamilton* include R- α -lipoic acid, L-carnitine and coenzyme Q10. See, *Hamilton*, Abstract. Indeed, at no place in the disclosure does *Hamilton* mention the presently claimed antioxidants. Therefore, it is readily apparent that *Hamilton* fails to disclose or suggest a pet food composition comprising an effective amount of an ingredient comprising an admixture of L-carnitine and one of ginkgo biloba and an antioxidant blend in an amount sufficient to improve hair or coat quality of an animal, in an orally acceptable carrier, wherein the antioxidant blend includes cysteine, grape or grape seed extracts rich in proanthocyanidins, vitamin C and vitamin E as required, in part, by currently amended independent Claim 1.

Moreover, anticipation is a factual determination that “requires the presence in a single prior art disclosure of each and every element of a claimed invention.” *Lewmar Marine, Inc. v. Bariant, Inc.*, 827 F.2d 744, 747 (Fed. Cir. 1987) (emphasis added). Federal Circuit decisions have repeatedly emphasized the notion that anticipation cannot be found where less than all elements of a claimed invention are set forth in a reference. See, e.g., *Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, 1370 (Fed. Cir. 2002). As such, a reference must clearly disclose each and every limitation of the claimed invention before anticipation may be

found. Because *Hamilton* fails to disclose each and every element of the present claims, *Hamilton* fails to anticipate the present claims.

Accordingly, Applicants respectfully request that the rejection of Claims 1-2, 4-8 and 17 under 35 U.S.C. §102(b) be reconsidered and withdrawn.

Further, because *Hamilton* fails to disclose each and every element of the present claims, as discussed above, *Hamilton* fails to render obvious the present claims. Indeed, Applicants submit that the Patent Office has not made out a *prima facie* case of obviousness because the presently cited reference fails to disclose or suggest each and every element of the present claims. In addition, since the currently amended composition includes a synergistic combination of L-carnitine and one of ginkgo biloba and a blend of specific antioxidants that provides improved pet hair and coat quality, as clearly demonstrated by the Examples, Applicants respectfully submit that such unexpected and synergistic results would overcome any *prima facie* case of obviousness made by the Patent Office.

Hamilton is also deficient because it fails to even recognize the benefits of the specific combinations of the currently amended claims. For example, *Hamilton* fails to recognize that the combination of a molecule that stimulates energy metabolism of a cell in combination with specific antioxidants may be used to improve the coat quality in pets. See, e.g., Examples 1-6 in the specification at pages 8-18. As is clearly demonstrated in the Examples, mice fed the diet containing the cocktail of antioxidants associated or not to L-carnitine (diet D and diet C, respectively) showed an increase in non-polar and polar lipids as well as total lipids in hair sebum when compared to the control diet A. See, specification, Examples.

Accordingly, Applicants request that the anticipation or, in the alternative, the obviousness rejection of Claims 1-2, 4-8 and 17 be reconsidered and withdrawn.

In the Office Action, Claims 1-2, 4-8 and 17 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claims 1-5 and 12 of co-pending U.S. Serial No. 10/527,097 and Claims 18 and 19 of co-pending U.S. Serial No. 10/597,436. The Patent Office asserts that, although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in all three applications are drawn to an orally administered composition comprising a molecule that stimulates energy metabolism

of a cell and/or an antioxidant to improve hair or coat quality of an animal in an orally acceptable carrier. See, Office Action, page 6, lines 1-11.

For purposes of advancing the prosecution of this application, Applicants elect to overcome the rejections of Claims 1-2, 4-8 and 17 over Claims 1-5 and 12 of co-pending U.S. Serial No. 10/527,097 and Claims 18 and 19 of co-pending U.S. Serial No. 10/597,436 through the filing of Terminal Disclaimers. Such election shall not be deemed an admission as to the propriety or accuracy of the Patent Office's conclusions or rejections. Applicants respectfully request that the submitted terminal disclaimers be entered by the Patent Office.

Accordingly, Applicants respectfully request that the provisional double patenting rejections of Claims 1-2, 4-8 and 17 under obviousness-type double patenting be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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